

After reviewing the evidentiary record and considering the arguments of the parties, the Appeals Board finds and concludes as follows:

The first issue the Appeals Board will address is whether the Administrative Law Judge should have extended the terminal date of the respondent to include the evidentiary deposition of Dr. Mary A. Lynch, one of claimant's treating physicians, in the record of this case. The Administrative Law Judge set the respondent's terminal date for submission of evidence as April 21, 1994. In respondent's Motion to Extend Terminal Date and a later Motion to Reconsider Motion to Extend Terminal Date, the respondent admitted that Dr. Lynch's deposition had been scheduled to be taken on March 29, 1994 and also on April 5, 1994 within respondent's terminal date of April 21, 1994. Dr. Lynch's deposition was not taken on either of these dates due to circumstances only attributable to the respondent. The respondent filed its Motion to Extend Terminal Date before the Administrative Law Judge on April 22, 1994, one (1) day after its terminal date expired on April 21, 1994. The Administrative Law Judge, in an Order dated April 22, 1994, denied respondent's request to extend its terminal date. The Administrative Law Judge found that the notice was filed after respondent's terminal date had expired and the respondent had failed to take Dr. Lynch's deposition due to circumstances only attributable to the respondent on two (2) different occasions prior to its terminal date expiring. The Appeals Board finds that K.S.A. 1992 Supp. 44-523(b) grants the Administrative Law Judge discretion as to whether or not a terminal date should be extended. In the case at hand, the Appeals Board finds that the Administrative Law Judge's decision not to extend the respondent's terminal date should be affirmed as the respondent has failed to show good cause for such extension.

The Administrative Law Judge awarded the claimant twenty percent (20%) permanent partial general disability based on the uncontroverted work disability testimony of claimant's vocational expert, Jerry Hardin. The Administrative Law Judge equally weighed Mr. Hardin's loss of labor market opinion of eighty percent (80%) utilizing Dr. Ernest Schlachter's restrictions, with a zero percent (0%) loss utilizing Dr. Lynch's opinion that claimant had no permanent restrictions. Dr. Lynch's opinion concerning claimant's work restrictions is contained in the evidentiary record, although her deposition is excluded. The claimant testified that Dr. Lynch had not placed restrictions on her. During Mr. Hardin's testimony, respondent obtained Mr. Hardin's opinion, through a hypothetical question, that claimant would not have a labor market loss or comparable wage loss, if Dr. Lynch had placed no permanent work restrictions on the claimant. No timely objection was made by the claimant to this testimony. Additionally, Mr. Hardin opined that even with the restrictions that Dr. Schlachter had placed on the claimant, she had the ability to earn a comparable wage. Accordingly, the Administrative Law Judge arrived at the claimant's twenty percent (20%) work disability by averaging a forty percent (40%) labor market loss with a zero percent (0%) comparable wage loss. See Hughes v. Inland Container Corp., 247 Kan. 407, 799 P.2d 1011 (1990).

The Appeals Board finds that the Award of the Administrative Law Judge should be affirmed. The Appeals Board agrees with the Administrative Law Judge's analysis, findings and conclusions contained in her Award. Accordingly, the Appeals Board finds there is no purpose to restate the Administrative Law Judge's findings and conclusions in this Order and, therefore, adopts the same as its own, as if they were specifically set forth herein.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award of Administrative Law Judge Shannon S. Krysl, dated April 26, 1994, should be, and is hereby, affirmed as follows:

AN AWARD OF COMPENSATION IS HEREBY MADE IN ACCORDANCE WITH THE ABOVE FINDINGS IN FAVOR of the claimant, Nancy Lynn Newman, and against the respondent, Carlos O'Kellys and its insurance carrier, Fireman's Fund Insurance Company, for an accidental injury sustained on December 4, 1992, and based on an average weekly wage of \$231.53.

The claimant is entitled to 16 weeks temporary total disability at the rate of \$154.38 per week or \$2,470.08 followed by 399 weeks at \$30.87 or \$12,317.13 for a 20% permanent partial general body disability, making a total award of \$14,787.21.

As of November 29, 1995, there would be due and owing the claimant 16 weeks temporary total compensation at \$154.38 per week in the sum of \$2,470.08, plus 139.71 weeks permanent partial compensation at \$30.87 per week in the sum of \$4,312.85 for a total due and owing of \$6,782.93, which is ordered paid in one lump sum less any amounts previously paid. Thereafter, the remaining balance in the amount of \$8,004.28 shall be paid at \$30.87 per week for 259.29 weeks or until further order of the Director.

The claimant is entitled to unauthorized medical up to the statutory maximum.

Future medical benefits will be awarded only upon proper application to and approval by the Director of the Division of Workers Compensation.

The claimant's attorney fees are approved subject to the provisions of K.S.A.. 44-536.

Fees necessary to defray the expenses of administration of the Workers Compensation Act are hereby assessed against the respondent to be paid direct as follows:

Barbara J. Terrell & Associates	
Deposition of Ernest R. Schlachter, M.D.	\$67.50
Deposition of Jerry D. Hardin, M.S.	\$115.50
Deposition Services	
Transcript of Regular Hearing	\$155.90

IT IS SO ORDERED.

Dated this ____ day of November 1995.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

- c: Timothy J. King, Wichita, Kansas
James A. Cline, Wichita, Kansas
Ken Pierce, Hutchinson, Kansas
Shannon S. Krysl, Administrative Law Judge
Philip S. Harness, Director